SUPREME COURT, U.S.

FILED

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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-211

JOHN WAYNE SHELTON,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

****

ON WRIT OF CERTIORARI
TO THE NORTH CAROLINA COURT OF APPEALS

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PETITION FOR WRIT OF CERTIORARI

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No. _____

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ON WRIT OF CERTIORARI
TO THE NORTH CAROLINA COURT OF APPEALS

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The petitioner, John Wayne Shelton, prays that a writ of certiorari issue to review the judgment made by the North Carolina Court of Appeals, entered March 28, 1973, affirming the conviction of the petitioner by the Superior Court Division, General Court of Justice of Surry County, North Carolina, which judgment the Supreme Court of North Carolina refused to review by its denial of petition for writ of certiorari entered May 1, 1973.

OPINIONS BELOW

The opinion of the North Carolina Court of Appeals ___ N.C. App. ___, 195 S.E.2d 369 (1973) is appended to this

petition. The judgment of the Supreme Court of North Carolina denying petitioner's petition for certiorari, ___ N.C. ___, 196 S.E.2d 276 (1973) is also appended to this petition.

JURISDICTION

The judgment of the Superior Court of Surry County convicting the petitioner of the offense of safecracking in violation of North Carolina General Statutes 14-89.1 and ordering him to be imprisoned for not less than ten or more than twelve years in the State prison was made and entered May 10, 1972. Petitioner's relief in the North Carolina courts was exhausted when his conviction was affirmed by the North Carolina Court of Appeals and when on May 1, 1973 the Supreme Court of North Carolina denied his petition for certiorari. The jurisdiction of this court is invoked under 28 U.S.C.A. 1257(3).

QUESTIONS PRESENTED

I. Whether the petitioner was denied due process of law under the Fourteenth Amendment to the United States Constitution when the District Attorney was allowed to argue during his opening statement that the State's witness, an alleged accomplice named Eddie Ray Spivey, had come into Court and pled guilty to the particular crime with which the petitioner was charged and would testify to the participation of other persons in the crime?

II. Whether the petitioner was denied due process of law under the Fourteenth Amendment to the Constitution of the United States when the State's witness was allowed to testify to other unrelated crimes allegedly committed by the State's witness and by the petitioner?

III. Whether the petitioner was denied due process of law under the Fourteenth Amendment to the Constitution of the United States when his conviction was based solely on the uncorroborated and uncertain testimony of the alleged accomplice?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States:

AMENDMENT XIV.

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner was tried under an indictment which charged that on the 21st day of September, 1971, he did unlawfully, willfully and feloniously forced open the safe of the Harris Home Center, a corporation doing business on West Main Street in Pilot Mountain, North Carolina, and that the safe was used for storing money and other valuables. (R p. 4) Petitioner was tried during the May 8, 1972 regular session of the Superior Court Division of the Surry County General Court of Justice. At the trial the petitioner entered a plea of not guilty.

During the selection of the jury, the District Attorney stated to the jury that a State's witness, an alleged accomplice named Eddie Ray Spivey, had pled guilty to the crime with which the petitioner was charged and would testify as to the petitioner's participation in the crime. (R p. 12) Petitioner's attorney objected to the Solicitor's statements and moved for a mistrial on that basis. The Court overruled the motion. (R pp. 12-13)

During the trial a number of witnesses testified for the State. However, except for the testimony of the accomplice, Eddie Ray Spivey, there was no direct testimony or circumstantial evidence to indicate that petitioner had participated in the crime. The evidence for the State tended to show merely that a safecracking had occurred on the date in question. (e.g. R p. 13, et. seq.)

The accomplice, Eddie Ray Spivey, testified that he was under indictment in 40 to 50 cases. (R p. 37) Over objection by the petitioner's attorney, he was permitted to testify as to whether or not the petitioner was involved in any of the other 40 to 50 cases in which the witness had been indicted. (R pp. 37-38)

The testimony of Eddie Ray Spivey, the alleged accomplice, was exceptionally vague, (R pp. 20-41) and he further testified that he would "do anything" to keep from going to jail. (R p. 41)

At the close of the State's evidence, the petitioner moved for a judgment of nonsuit. The motion was overruled. The petitioner elected to offer no evidence and renewed his motion for nonsuit made at the close of the State's evidence. The jury returned a verdict of guilty and the petitioner moved to set the verdict aside on the grounds of insufficient evidence to justify the conviction. This motion was also denied. Petitioner was sentenced to be imprisoned for not less than ten or more than twelve years.

ARGUMENT

The decision below should be reviewed because the North Carolina Court of Appeals decided a federal question of substantial importance about which there is a great dispute between the States.

The issues raised in this petition for certiorari are whether the petitioner was denied due process of law when the district attorney was allowed to argue during his opening statement that an alleged accomplice had pled guilty to this particular crime, when a State's witness was allowed to testify to other unrelated crimes allegedly committed by him and the petitioner, and when the sole evidence against the petitioner was the testimony of an alleged accomplice which was not corroborated by any other testimony or evidence. The North Carolina Court of Appeals held that the petitioner had not been denied due process of law in any of the above situations.

1. The petitioner's right to due process of law was abridged by allowing the State to argue in its opening argument that a State's witness, an alleged accomplice, had pled guilty to this particular crime and would testify as to the participation of the petitioner in that crime.

During his opening statement the prosecuting attorney stated that the State would "rely in part upon the testimony of one Eddie Ray Spivey, who during this term

of Court has pled guilty to this crime and who will testify against the other defendants in this case and their participation in it." Such a statement at the very opening of the trial was highly prejudicial since it would naturally have a serious and, perhaps, permanent effect on the jurors' minds. Quig v. United States, 33 F.2d 820 (3rd Cir. 1929). Immediately after the statement was made petitioner's attorney objected and then out of the presence of the jury the trial judge overruled that objection.

Cases throughout the United States have held that a statement by a prosecuting attorney during his opening argument to the jury that another defendant has pled guilty to the same crime is prejudicial and presents grounds for a new trial. Quig v. United States, supra; State v. Peters, 107 A.2d 428 (R.I. 1954); Pryor v. State, 34 Okla. Cr. 131, 245 P. 669 (1926); Lincoln v. State, 191 Ind. 426, 133 N.E. 351 (1921). This is especially true in those cases where the court fails or refuses after objection to correct the effect of the prosecutor's argument. See, e.g. Pryor v. State, supra; State v. Ferrone, 96 Conn. 160, 113 A. 452 (1921); Powers v. Commonwealth, 139 Ky. 815, 83 S.W. 146 (1904). In fact, in those cases where it has been held that such statements are not prejudicial, the holding has been almost universally based on a finding that the court had cured the prejudicial effects of such statements through its rulings and instructions to the jury. See, e.g. Stewart v. United States, 211 F. 41 (9th Cir. 1914);

People v. Watson, 307 Mich. 596, 12 N.W.2d 476, cert. denied 323 U.S. 749, 89 L.ed. 600, 65 S.Ct. 81 (1943); Vecchio v. State, 15 Ohio App. 153 (1921); State v. Hunt, 352 S.W.2d 57 (Mo. App.). In all the above cases it was conceded by the courts that the statements were highly prejudicial and, unless corrected by proper action of the trial court, would require the granting of a new trial. In the present case there was no action taken by the trial judge to dissipate the prejudicial effects of the prosecutor's statements. He did not sustain the petitioner's objection, instruct the jury to disregard the prosecutor's statement, or in any other way indicate to the jury that the act of an alleged accomplice in pleading guilty was binding only on him and did not in any way affect the rights of the defendant on trial.

The situation was aggravated when the prosecutor attempted to bring out from the alleged accomplice during his testimony the fact that he had pled guilty to the same crime. The prosecutor asked whether the witness, Eddie Ray Spivey, the alleged accomplice, had entered a plea of guilty. The witness answered yes, and the petitioner's attorney objected. At that point, after the testimony was before the jury, the prosecutor asked that his own question be stricken and it was stricken by the trial judge. This testimony was most effective in reinforcing the prejudicial effect of the prosecutor's earlier statement. This is especially so because the jurors had not been instructed to disregard this earlier statement. Many cases across

the United States have held that a new trial must be granted if an alleged accomplice is allowed to testify over objection that he has pled guilty to the same crime. See, e.g. Babb v. United States, 218 F.2d 538 (5th Cir. 1955); State v. Jackson, 47 N.M. 415, 143 P.2d 875 (1943); Webster v. Commonwealth, 223 Ky. 369, 3 S.W.2d 754 (1928). In situations such as this courts have again held that in certain cases the prejudicial effect of such a witness's testimony can be cured by prompt and proper instructions. See, e.g. Carter v. United States, 281 F.2d 640, cert. denied 364 U.S. 880, 5 L.ed.2d 102, 81 S.Ct. 168 (1960). In the present case there were no such instructions.

From the foregoing it is clear that the effect of the prosecutor's statement and his later attempt to reinforce that statement with actual testimony is so highly prejudicial and the prejudice so fundamental that it deprived the petitioner of a fair trial, which is the essence of due process. Such a violation of due process, which was properly objected to and which the trial court failed and refused to cure, required that the petitioner be granted a new trial.

2. The petitioner was deprived of due process of law when the State was allowed to elicit testimony over objection which indicated that the petitioner had committed other crimes.

In questioning a State's witness, Eddie Ray Spivey, an alleged accomplice,

the prosecutor asked the witness to state "whether or not either of these defendants were involved with [him] in the [40 to 50 other cases in which the witness had been indicted]." The petitioner objected, his objection was overruled, and the witness answered that the petitioner was involved with him in some of these other cases. The petitioner moved to strike this testimony and this motion was also denied. The prosecutor then asked: "Do I understand that you have been involved with both of the defendants?" The petitioner objected, his objection was overruled, and the witness answered: "Yes, sir."

It is elemental law that evidence of offenses unconnected with the offense for which the accused is on trial is inadmissible. Boyd v. United States, 142 U.S. 450, 35 L.ed. 1077, 12 S.Ct. 292 (1892); State v. McClain, 240 N.C. 171, 81 S.E.2d 364 (1954). "It is inconsistent with our traditional conception of a fair trial to permit the introduction of any evidence which might influence a jury to convict a defendant for any reason other than that he is guilty of the specific offense with which he is charged." United States v. Harris, 331 F.2d 185, 187 (4th Cir. 1964).

The rationales behind the above rule were clearly set out by Justice Ervin of the North Carolina Supreme Court (now Senator Ervin of North Carolina) in his opinion in State v. McClain, 240 N.C. 171, 81 S.E. 2d 364, 365-366 (1954) (citations omitted) as follows:

The general rule rests on these

cogent reasons: (1) "logically, the commission of an independent offense is not proof in itself of the commission of another crime." (2) evidence of the commission by the accused of crimes unconnected with that for which he is being tried, when offered by the State in chief, violates the rule which forbids the State initially to attack the character of the accused, and also the rule that bad character may not be proved by particular acts, and is, therefore, inadmissible for that purpose. (3) "proof that a defendant has been guilty of another crime equally heinous prompts to a ready acceptance of and belief in the prosecution's theory that he is guilty of the crime charged. Its effect is to predispose the mind of the juror to believe the prisoner guilty, and thus effectually to strip him of the presumption of innocence." (4) "furthermore, it is clear that evidence of other crimes compels the defendant to meet charges of which the indictment gives him no information, confuses him in his defense, raises a variety of issues, and thus diverts the attention of the jury from the charge immediately before it."

The general rule set forth above is subject to certain well defined and limited exceptions. The only one of those exceptions which could remotely authorize the testimony set forth above was the one on which the North Carolina Court of Appeals based its decision. That exception as set forth by the North Carolina Court of Appeals states:

> Evidence of other crimes is admissible when it tends to establish a common plan or scheme embracing the commission of a series of crimes so related to each other that proof of one or more tends to prove the crime charged and to connect the accused with its commission. (citations omitted) Evidence of other crimes receivable under this exception is ordinarily admissible under the other exceptions which sanction the use of such evidence to show criminal intent, guilty knowledge, or identity.

It is clear that the testimony in this case does not meet the requirements of that exception. The testimony of the State's witness on cross examination indicated that the State's witness following his arrest the previous fall had been questioned about a number of crimes that had been committed and that he had then admitted that he was involved in 45 to 50 of the crimes mentioned to him. No description of the crimes was ever made,

though it appears that some of the crimes were break-ins. This testimony on cross examination was then followed by the following questions by the prosecutor:

Q. Mr. Spivey, do I understand that you are under indictment in 40 or 50 cases?

A. Yes, sir.

Q. In how many of them have you been tried?

A. Two or three.

Q. Has any judgment been entered in any of the cases?

A. No, sir.

Q. Please state to the Court and the jury whether or not either of these defendants were involved with you in the other cases?

Attorney Pettyjohn: Objection.

Court: Overruled.

A. Yes, sir.

Q. Which one?

A. Shelton.

Attorney Pettyjohn: Objection, move to strike.

Court: Objection overruled and motion to strike overruled.

At no point was it indicated which of the 45 to 50 crimes were participated in by the petitioner and what type of crimes these were. There being no evidence as to the type of other crimes the petitioner had allegedly engaged in, it is impossible to say that this was "a series of crimes so related to each other that proof of one or more tends to prove the crime charged and to connect the accused with its commission." It is therefore clear that the testimony allowed into evidence over the petitioner's objection did not and does not fall within this particular exception or any other exception to the general rule stated above. The evidence was thus of a type adduced only to place in the minds of the jurors the belief that because he committed one crime the petitioner also committed this one. "Its effect is to predispose the mind of the juror to believe the prisoner guilty, and thus effectually to strip him of the presumption of innocence." State v. Gregory, 191 S.C. 212, 4 S.E.2d 1, 4 (1939). Especially is this so when the prosecutor is then allowed to use this testimony to argue to the jury that the crime charged was just a part of a "crime wave" in which the petitioner was involved. To allow testimony of this type is "inconsistent with our traditional conception of a fair trial", and in allowing the above testimony into evidence the North Carolina Court of Appeals deprived the petitioner of due process of law.

3. Petitioner was denied due process of law when his conviction was based solely on the uncorroborated and uncertain testimony of an alleged accomplice.

The only evidence linking the petitioner with the crime charged was the testimony of the alleged accomplice, Eddie Ray Spivey, who was most confused and uncertain. The prosecutor elicited the only testimony damaging to the petitioner through the continuous use of leading questions. (The North Carolina Court of Appeals held that the allowance of leading questions was completely within the trial court's discretion and did not constitute reversible error.) It became very clear on cross examination the the witness needed the guidance of these leading questions to remember the events about which he was testifying. He was frequently forgetful (see, e.g. R. pp. 29-37) and confused. He could not remember how or when he and his alleged accomplices had gotten together the evening of the crime, (R. pp. 27, 29), the date the crime allegedly occurred, (R. p. 29), or the physical description of the scene of the crime, (R. p. 30).

Mr. Spivey further testified that he had admitted to 45 to 50 other crimes (R. p. 31), and hoped that his testimony in this case might help him get probation for his other crimes, (R. p. 33), that he was testifying in order to save his own neck, (R. p. 37), and that he had said that he would do and say anything to keep from going to jail, (R. p. 37). He also admitted that he had once testified under oath

that he and a Jimmy Smith had broken into the Arnold Palmer Driving Range in Winston-Salem, North Carolina, on May 3, 1971. (R. p. 34) Mr. C. G. Cline, another witness for the State, later testified that based on Mr. Spivey's statement he had arrested Jimmy Smith for the break in at the Arnold Palmer Driving Range on May 3, 1971, but that he had later discovered that Mr. Smith was in the Forsyth County Jail on May 3, 1971. (R. pp. 49-50)

It is clear from the above that Mr. Spivey's testimony was most uncertain and its veracity was seriously eroded. The State presented no corroborative evidence to connect the petitioner with the crime charged. The petitioner's freedom thus hinged on the unclear, contradictory, and uncorroborated testimony of the alleged accomplice. To allow the petitioner's conviction to stand on evidence of this type violates the petitioner's right to due process of law.

The common law rule appears to have been that the testimony of an accomplice may be sufficient to warrant a conviction, even though it is not corroborated. Nilva v. United States, 212 F.2d 115 (8th Cir. 1954). However, that rule has been severely limited, and even where it is still recognized the view has been that while a jury may convict on the uncorroborated testimony of an accomplice, they should not do so, and that such testimony is subject to grave suspicion. Madigan v. United States, 23 F.2d 180 (10th Cir.).

The reason most generally stated for a rule requiring corroboration of an accomplice is that a witness could otherwise transfer responsibility for a crime from his own shoulders to another's. Guthrie v. Commonwealth, 171 Va. 461, 198 S.E. 481 (1938). It has therefore often been held that corroboration is necessary when there are circumstances which tend to throw suspicion on the testimony of an accomplice, as when the testimony is contradictory, inconsistent, or where it appears that the witness has sworn falsely to a material matter. 23 C.J.S., Criminal Law §810(1)(c). And the corroborative evidence must, without the aid of any testimony of the accomplice, connect or tend to connect the accused with the crime charged. See, e.g. Ing v. United States, 278 F.2d 362, 367 (9th Cir. 1960); Rozier v. State, 68 Ga. App. 797, 24 S.E.2d 137 (1943).

In the present case there was an overwhelming need for corroborative evidence. The alleged accomplice's testimony was uncertain, inconsistent, and, at points, contradictory. His memory of any but the most basic facts was totally lacking. It appears that on at least one other occasion he gave sworn testimony implicating another person in a crime that person could not have committed because the one he accused was already incarcerated on the date of the crime. And over all his testimony are the accomplice's admissions that he was testifying to save his own neck and that he would do and say anything to keep from going to jail. With such testimony from such a witness, the chances

of abuse are so obvious and the likelihood that the witness was not truthful so great that the State must be required to properly corroborate the testimony of the accomplice before the accused can be convicted. To allow the petitioner's conviction to stand without such corroboration makes the trial of the petitioner inherently unfair and deprives him of due process of law.

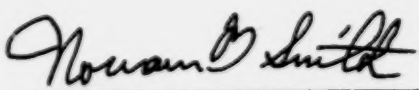
It appears that this Court has never considered the question of whether the failure to corroborate an accomplice's testimony is a deprivation of due process of law. This Court should make this determination because it is an important issue of law and because the rules vary so greatly from state to state. It is clear from the testimony in the present case that to allow an accomplice to testify and to have his uncorroborated testimony serve as the sole basis for the conviction gives rise to such a great chance of abuse and unfairness that such a practice should be declared in violation of an accused's right to due process of law.

In the present case the State attempted to corroborate the testimony of the accomplice through testimony of others to the effect that the accomplice's statement was the same as he had made to them previously and that certain physical facts were as the accomplice stated. However, there was no evidence other than the accomplice's which tended to connect the petitioner with the crime charged. The evidence required to corroborate an

accomplice's testimony must be such that it connects the accused to the crime charged without reference to the testimony of the accomplice. 23 C.J.S., Criminal Law §812 (2)(b) and cases cited therein. Since there was no corroborative evidence of this type and since corroborative evidence was essential to insure the petitioner a fair trial, the petitioner's conviction abridged his right to due process of law. The petitioner respectfully requests this Court to review the decision of the North Carolina Court of Appeals and determine that such uncorroborated testimony cannot form the basis for the petitioner's conviction.

CONCLUSION

For the reasons stated above, it is respectfully submitted that this petition for writ of certiorari should be granted.



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APPENDIX TO PETITION

No. 7217SC791 SEVENTEENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

Spring Session 1973

STATE OF NORTH CAROLINA

v. From Surry

ERNEST DALE SMITH and
JOHN WAYNE SHELTON

Appeal by defendant from Crissman, Judge, 8 May 1972 Session of Superior Court held in Surry County.

Defendant was tried on an indictment charging him with safecracking in violation of G.S. 14-89.1. Without objection he was tried jointly with one Ernest Dale Smith, who was charged with the same offense. The principal evidence against defendant and Smith was provided by the testimony of Eddie Ray Spivey, an accomplice. Defendant and Smith offered no evidence. Defendant was found guilty as charged, and from judgment imposing prison sentence, he appealed.

Attorney General Robert Morgan by Assistant Attorney General Henry T. Rosser for the State.

H. Glenn Pettyjohn for defendant appellant.

PARKER, Judge. Defendant's first assignment of error is directed to the denial of his motion for mistrial. The reason stated by defendant's counsel for making motion for mistrial was that the solicitor, in his opening statement made during the process of selecting the jury, stated that Spivey had come into court and pleaded guilty to the same offense for which defendant was being tried. Insofar as the record before us discloses, however, the only statement which the solicitor made in the presence of the jury panel was to the effect that the State contended that Spivey was a reliable witness, and then the solicitor inquired if any member of the jury panel "would not under any circumstances take the testimony of an accomplice?" The record does not contain the statement attributed to the solicitor as the reason given by defendant for his motion for mistrial, but contains only a statement by defendant's counsel as to what the solicitor said. We cannot accept the statement of counsel as sole support for the remarks challenged. 3 Strong, N.C. Index 2d, Criminal Law, § 158. Moreover, even if the remarks attributed to the solicitor were made inthe presence of the jury panel, in our opinion no prejudicial error resulted under the circumstances of his case. Spivey was presented as a witness for the State, testified in detail concerning his own and defendant's participation in the offense for which defendant was tried, and was subjected to full cross-examination by

defendant's counsel. Defendant's first assignment of error is overruled.

In his second assignment of error defendant contends the court erred in permitting the solicitor to "lead" the witness Spivey in his testimony. The contention is without merit. It is well settled that the allowance of leading questions is a matter entirely within the discretion of the trial judge and his rulings will not be reviewed on appeal, at least in the absence of a showing of abuse of discretion. Stansbury, N.C. Evidence 2d, §31, p. 59. No abuse of discretion is shown.

In his third assignment of error defendant contends the court erred in permitting the witness Spivey to testify to other crimes allegedly committed by him together with defendant and Smith. Spivey's testimony tended to show a conspiracy between Spivey, Smith and defendant to break and enter the Harris Home Center, Inc., in whose place of business the alleged safecracking occurred. In cross-examining Spivey, defendant's attorney elicited testimony tending to attack Spivey's credibility, including testimony that Spivey had been involved in some 45 or 50 crimes to which he had confessed and in which he had implicated others. On redirect examination, Spivey testified that he was under indictment in 40 or 50 cases and, over objection, testified that defendant and Smith were involved with him in some or all of the other cases.

The general rule is that in a prosecution for a particular crime the State cannot offer evidence tending to show that the accused has committed another distinct, independent or separate offense. State v. Fowler, 230 N.C. 470, 53 S.E.2d 853; State v. Choate, 228 N.C. 491, 46 S.E.2d 476. This is true even though the other offense is of the same nature as the crime charged. State v. Jeffries, 117 N.C. 727, 23 S.E. 163. However, the rule stated is subject to certain well recognized exceptions set forth by Ervin, J., in State v. McClain, 240 N.C. 171, 81 S.E.2d 364. We think the testimony challenged here falls within the sixth exception set forth in McClain, as follows:

> "Evidence of other crimes is admissible when it tends to establish a common plan or scheme embracing the commission of a series of crimes so related to each other that proof of one or more tends to prove the crime charged and to connect the accused with its commission. (Citations omitted.) Evidence of other crimes receivable under this exception is ordinarily admissible under the other exceptions which sanction the use of such evidence to show criminal intent, guilty knowledge, or identity."

This assignment of error is overruled.

Defendant's fourth assignment of error relates to what we view as a "slip of the tongue." S.B.I. Agent Batten, as a witness

for the State, was asked by the solicitor if defendant made a statement to him relative to "this particular breaking and entering." Defense counsel objected and the court instructed the jury to consider the answer "for the purpose of corroborating the testimony of the witness Spivey if you find that it does corroborate his testimony and for that purpose only." Thereafter, the witness testified that Mr. Spivey made a statement and the witness proceeded to relate the statement. We think the instruction of the court and the testimony of the witness made it completely clear that the statement which the witness related was made by Spivey and not by defendant. This assignment of error is overruled.

We have carefully considered the other assignments of error brought forward and argued in defendant's brief but finding them also without merit, they too are overruled.

No error.

Judges BRITT and VAUGHN concur.

Filed March 28, 1973

No. 57PC SEVENTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

Spring Session 1973

****

STATE OF NORTH CAROLINA)
)
v.) From Surry
)
ERNEST DALE SMITH and)
JOHN WAYNE SHELTON)

****

Petition for writ of certiorari by John Wayne Shelton to review the decision of the North Carolina Court of Appeals, 195 S.E.2d 369. Denied.